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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 0338(PKC)

5 JON CRUZ,

6 Defendant.

7 -----x

8
9 July 20, 2017
2:29 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13
14 APPEARANCES

15 JOON H. KIM

Acting United States Attorney for the
Southern District of New York

16 BY: SHAWN G. CROWLEY

17 Assistant United States Attorney

18 STEVE ZISSOU & ASSOCIATES

Attorneys for Defendant

19 BY: STEVE ZISSOU

20 COLSON LAW PLLC

Attorneys for Defendant

21 BY: DEBORAH A. COLSON

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1 THE COURT: Please be seated.

2 THE CLERK: United States of America against Jon Cruz.
3 For the government?

4 MS. CROWLEY: Good afternoon, your Honor. Shawn
5 Crowley for the government.

6 THE COURT: Afternoon, Ms. Crowley.
7 And for the defendant?

8 MR. ZISSOU: Mr. Cruz is represented by Steve Zissou
9 and Deborah Colson. Good afternoon, your Honor.

10 THE COURT: All right.

11 Mr. Zissou, let me go through the materials I have.
12 The question will be whether I have everything I should have.

13 I have a presentence report, recommendation and
14 addendum that was revised by Probation on December 13, 2016. I
15 have a sentencing memorandum from the government which was
16 received on or about July 10. It's dated July 6, 2017.

17 I also have victim impact statements from -- on behalf
18 of -- or I have five victim impact statements in both redacted
19 and unredacted form.

20 I also have a sentencing memorandum for Mr. Cruz which
21 was transmitted on or about June 21, and of course annexes
22 reports from a licensed social worker, Erik Mercer, from Dr.
23 Alsip, from Dr. Kaplan, Dr. Martinez, Dr. Kreuger. There is a
24 report in here from a consulting project. I believe this was
25 done in connection with bail. There is a polygraph report.

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1 There are a bunch of letters of support, and, of course, there
2 is the DVD that I gather was prepared in connection with a bail
3 application.

4 Do I have everything I should have on the subject of
5 sentencing?

6 MR. ZISSOU: I believe so, Judge. If you did not
7 mention it, the attorney for the government submitted a
8 sentencing memorandum, too, and --

9 THE COURT: I didn't mention it, you are absolutely
10 right. I thought I had mentioned it because I said I got it --
11 it is dated on or about July 6. Is there a second memo?

12 MS. CROWLEY: No. That is the only one.

13 THE COURT: OK. All right.

14 MR. ZISSOU: Thank you very much.

15 THE COURT: All right. Does the defendant -- does the
16 government agree I have everything I should have on the subject
17 of sentencing?

18 MS. CROWLEY: Yes, your Honor.

19 THE COURT: All right.

20 Has the defendant read, reviewed, and discussed with
21 you the presentence report, recommendation and addendum?

22 MR. ZISSOU: He has, your Honor.

23 THE COURT: Does the defendant have any objection to
24 the facts set forth in the presentence report?

25 MR. ZISSOU: We do not, your Honor. There is one just

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1 change that we request. I have not made an issue of this. It
2 just has to do with pedigree.

3 The Probation Department indicated that Mr. Cruz was
4 male Hispanic. And while it is true that his father was born
5 in Spain, he was raised Jewish. He has been bar mitzvahed. He
6 has never identified as Hispanic in any college application or
7 on any job application. And so we just ask for that change to
8 his pedigree or the Probation Department be directed to make
9 that change.

10 THE COURT: Any objection?

11 MS. CROWLEY: No, your Honor.

12 THE COURT: All right. So the whole line will be
13 taken out.

14 All right. Any objection to the guideline calculation
15 in the presentence report?

16 MR. ZISSOU: No, your Honor.

17 THE COURT: All right. Does the government have any
18 objections to the facts set forth in the presentence report?

19 MS. CROWLEY: We do not, your Honor.

20 THE COURT: Any objection to the guideline
21 calculation?

22 MS. CROWLEY: No objection.

23 THE COURT: All right. I adopt as my findings of fact
24 the facts set forth in the presentence report, and, further, on
25 my review, the guidelines were correctly calculated.

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1 So the defendant is at total offense level 33,
2 Criminal History Category I. The statutory range is he must
3 receive a mandatory minimum sentence of five years and may
4 receive a sentence up to 20 years. The guideline range of
5 imprisonment is 135 to 168 months, and the recommended sentence
6 from the Office of Probation is 135 months' imprisonment.

7 I will now give Mr. Zissou an opportunity to speak on
8 behalf of the defendant.

9 MR. ZISSOU: Judge, there are a number of things that
10 I should bring, in addition, to your attention, although it is
11 seldom that counsel is able to approach accord at sentencing,
12 having submitted virtually every conceivable thing that can be
13 submitted, but there is always a little bit more to say. As
14 your Honor knows, that's frankly how lawyers operate. There is
15 one more thing we might be able to say to convince a judge that
16 what we recommend is the appropriate thing.

17 Much of what we submitted is a function of Mr. Cruz's
18 embrace of his situation. And I should -- I should really
19 start with that. Part of it is family, and no one can mince
20 that standing behind me is family, friends, former teachers,
21 colleagues, students. It's been astounding from the beginning,
22 because that has been the approach. That has been how this
23 case played out from the beginning.

24 And it was difficult for me to really put things in
25 perspective because given the nature of the charges and what

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1 Mr. Cruz was facing, lawyers sort of look at things logically,
2 scientifically. We look for evidence. We are taught to be
3 skeptical of everything. And I first met him the day after I
4 think he was arrested. He was in detention at the MCC. He was
5 in the Special Housing Unit because of concerns about his
6 safety. And he had a number of concerns, but they weren't the
7 kind of concerns that clients usually have when they are
8 arrested. Those clients, they want to know what am I facing,
9 what is it looking like.

10 And Jon had a number of unusual requests, sort of a
11 function of his, well, as we know, he has an obsessive
12 compulsive disorder. For example, he wanted to know if I would
13 call the gym to let them know he wasn't coming for his training
14 lesson the next day. But one of the things that he wanted to
15 know was whether or not the complaint that was filed in this
16 case would be made public. And when I looked at him, I said
17 not only is it a public record, it is filed on the court
18 docket, but the New York Post has printed it in all its glory.
19 And an unusual thing happened at that moment. It was as if a
20 weight had been lifted from his shoulders. He adopted a
21 resignation, if you will, but not a negative resignation. It
22 was a positive resignation.

23 He looked at it and he said, well, then, it's out now.
24 He knew at that moment that this alternate universe he was
25 living in, this other life that he was living, the life that

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1 the folks in this courtroom knew nothing about, the life that
2 he kept hidden from them, he knew it was all out there, and he
3 knew that he would either be abandoned or not abandoned. Folks
4 would stand by him or they would not. But he knew that the
5 shackles, if you will, the figurative shackles, were going to
6 be removed, and what would remain is the physical walls that
7 surrounded him, the bars and the life in prison that only your
8 Honor can control, putting aside the mandatory minimum for a
9 moment.

10 And he knew. And from that moment in time he has had
11 this embrace of the future. And so it should not surprise the
12 Court that all of the mental health experts who have analyzed
13 him have come up with the same conclusion. He's literally no
14 risk of future danger, and part of that is because he looks
15 forward to the future. He's freed of the shackles, freed of
16 the bonds, freed of what had imprisoned him not just while he
17 was a teacher but when he was a teenager. His shacks started
18 back then, as the medical -- as the mental health records
19 indicate, all the way back then.

20 This was an addiction, if you will, an obsessive
21 compulsive disorder, an issue that poisoned him. And despite
22 the fact that he is also this extraordinary young man,
23 reflected in the DVD that we submitted to your Honor -- and,
24 frankly, Judge just as an aside, as we were going forward,
25 there were so many -- I'm going to get to those in a minute --

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1 so many people day after day who would call me, who would reach
2 out to me, people who would say the same thing. We know what
3 he has done and we know it is bad and we don't forgive him and
4 we don't condone it, but we know there is so much good in him.
5 We know. And everyone said the same thing. What he's done for
6 me, what he's done for our family, what he's done for my son or
7 my daughter, that was the sentiment.

8 So we decided, well, we'd better put this together in
9 a way that is a little bit easier to communicate. Everyone in
10 the room, every letter that was written to you, everyone in the
11 room would have the same opinion and views as those that were
12 expressed in the mitigation submission that we gave to you.
13 And that's what makes it possible for this young man.

14 And so I thought about it. It was -- it was -- I
15 couldn't quite -- I couldn't quite put my finger on it. What
16 was it? Why is this young man so calm, if you will? Why is he
17 so hopeful? Why is he not worried about what's going to happen
18 as much as a human would be? And, you know, you get to --
19 Judge, as you know, you get to a certain age and if you have
20 had a life full of experiences, things kind of pop into your
21 head. And so as I'm sitting with him, I couldn't -- what
22 popped into my head was not what a lawyer might think,
23 carefully analyzing evidence and trying to be logical. I
24 thought back to the words of a philosopher written on parchment
25 2,000 years ago about the truth and how the truth will set you

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1 free.

2 And he's not free, we know that. He's not physically
3 free. There is still much to determine that the Court will, as
4 I said. But he is so much freer now than he was before. He
5 was freer when he was detained pending the Court's
6 determination of bail. He was free -- he was free after he was
7 released on the most stringent conditions known to the
8 sentencing -- to the Bail Reform Act. He was not simply
9 released on bond, but when Judge Woods reviewed the bond --
10 Judge Gregory Woods reviewed the bond, he imposed additional
11 conditions -- house incarceration, not just house arrest -- I'm
12 not sure I know the difference, but it is house
13 incarceration -- a custodial parent involved, residing with his
14 parents, no contact, no smart phones, no computers.

15 And, still, he was free then. He continued to be free
16 of what mattered, frankly, after he was detained. Of course,
17 your Honor recalls the Bail Reform Act requires detention when
18 somebody is convicted of an offense such as this, and he was
19 detained on -- last September. And to say that I wasn't
20 concerned because of who he is and what he is and what he was
21 charged with and the notoriety of this case would be an
22 understatement.

23 As your Honor knows, sometimes if you try to do too
24 much, it's the opposite. Sometimes if you just step back and
25 let the process work, it works out. I did that with some

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1 trepidation. And as soon as he was detained, I went to see him
2 the next day and, oddly enough, he was doing well. Oddly
3 enough, he wasn't put in segregation. He wasn't put in a
4 special unit. He wasn't put in protective custody. He was in
5 a unit with the most dangerous criminals in our society --
6 murderers, gang members, you name it. I thought for a minute
7 I've got to get him out of here, this can't be, he is not going
8 to last there. This is a man that never stops surprising me,
9 and his family and friends and supporters never stop surprising
10 me.

11 So after a few days and after a few weeks, Jon became
12 in his unit what he was in his high school -- kind, generous,
13 considerate. He became the interpreter of documents. He
14 helped people write letters, helped them understand what they
15 were facing. One of the things that they charge you for at the
16 MCC, they have this CorrLinks system where the inmates can send
17 messages, they charge you a large amount. And a good portion
18 of the folks in there, they don't read and write very well. He
19 reads faster than any other human being I have ever met and he
20 writes faster. He types faster than any other human being I've
21 ever met. Part of that is what got him in trouble,
22 unfortunately. But all of a sudden he became a -- a valued
23 member of that unit. Gang members looked for his counsel. And
24 other people looked forward to his library. In his cell is the
25 library of the unit. He has hundreds of books, magazines,

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1 periodicals. And folks come in and they read. And he has made
2 the unit a happier, safer place for everyone to be.

3 It continues to astound me. I explained it to --
4 recently, I discussed it with his grandfather, Alan, about what
5 he had been able to do in the time he was in jail. And Alan --
6 Mr. Belzer, I should say, expressed how proud he was of his
7 grandson, despite what he had done, and said, He's made a life
8 for himself and I'm very proud of him.

9 There are other people, as I said, in the room here,
10 some of them come from California, somebody from the Kyle
11 family. I don't mean to point everyone out. There are folks
12 from his -- his high school teachers, as I've said earlier,
13 folks that come from far away, from distant places to be here
14 for him. That is part of what has been going on for the last
15 two years. It sort of died off for a little bit because so
16 many people were in touch with him, so many so often, I thought
17 it had pretty much come to an end until this week and, oddly
18 enough, I got a message from Amanda's father and Amanda I think
19 has a letter to the Court; it is in the file. And it was from
20 her father, who had sent me a message saying that Amanda was in
21 school in Europe and couldn't come back for the sentencing but
22 insisted that I appear instead. So Amanda's father is here as
23 well on behalf of his daughter. And she is hardly --

24 THE COURT: You have to keep your voice up, please.

25 MR. ZISSOU: She is hardly the only one.

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1 So I'd say this to you, Judge. I say it in a way that
2 is unusual for a lawyer to be able to do. It just seems that
3 every step of the way here there has been some fortuitous
4 event. Everything that happens, even things that I am not
5 pleased with, like him getting detained or him being released
6 on stringent conditions, conditions I thought that were too
7 burdensome, and for most were, there has been some benefit.

8 One of the benefits is because of the conditions he
9 had to come to the office to review discovery. And he was
10 there four or five days a week, sometimes on Saturdays, because
11 I like to get work done on Saturdays, too, and it is a little
12 bit quieter. And him and I were together for just to say a
13 lot. And normally lawyers when they appear before a judge,
14 they don't really know the client. You know, they're
15 advocating for their client. They don't really know him well.
16 They know what everyone else in the courtroom knows has
17 happened. But I sat with him day after day and came to
18 understand the kind of young man that he was.

19 One of the things that most moved me was we have
20 working for us a senior citizen. She has been with us for a
21 while, and she struggles sometimes to figure out how to work
22 what's called modern technology, like phones, for example. And
23 with others, she has been with us for a long time, and she
24 works for one of my partners primarily, and she is very
25 concerned that he will figure out that she needs stuff

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1 explained to her sometimes.

2 And I'd be sitting with Jon, or I would be sitting in
3 my office and Jon would be waiting for me in the conference
4 room, and I'd hear way back in my office, "Jon. Jon." And it
5 would be Theresa. "Jon, how do you" -- one thing or another.
6 Or "What is this person saying?" Or -- and I could hear from a
7 distance Jon Cruz kindly, patiently explaining it to her. This
8 went on regularly.

9 He is, I know of no other way to say it, he is perhaps
10 the kindest, most considerate human being I have ever met. And
11 I say that, knowing better than anyone what he is accused of
12 and what he has done, and I know it better than folks who think
13 they know this case.

14 There was a long time when Jon rationalized what he
15 was doing. There was a long time when he thought that -- or
16 convinced himself that what he was doing was not a real harm to
17 anyone, and he'll explain this to you. I know he has submitted
18 a lengthy statement to the Court in writing, but he's got a
19 little bit more to say to explain, and I'm sure your Honor will
20 be grateful to hear that.

21 Six months -- I mean, six years, Judge, is more than
22 sufficient in this case. Indeed, frankly, I wish we had been
23 able -- if I had been more convincing and had been able to
24 convince the Court or the United States Attorney's Office to
25 reduce the count to zero to ten so we could stand before the

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1 Court and ask you to impose a lesser sentence, but certainly --
2 certainly 60 months is sufficient but not greater than
3 necessary in this case, and I respectfully urge you to impose
4 that sentence.

5 THE COURT: Thank you, Mr. Zissou.

6 Mr. Cruz, this is your opportunity to speak, to
7 address the Court directly, to bring to my attention any facts
8 or circumstances that you believe I should take account of in
9 passing sentence on you today. If there is anything you wish
10 to say, Mr. Cruz, this is the time to say it.

11 Move the microphone over, please.

12 THE DEFENDANT: Thank you, your Honor.

13 THE COURT: Why don't you do it from a seated
14 position. I think it would work better.

15 THE DEFENDANT: Thank you, your Honor. I want to
16 thank you for your time and your patience in considering my
17 case, and for approaching what I know is a really difficult
18 matter with an open mind.

19 There are many people that I hurt and many things that
20 I deeply regret. From the teenagers that I obsessively reached
21 out to, to my own students who looked up to me, to my adoring
22 parents who have always supported me, to my grandfather for
23 placing a trust in me that I betrayed, my former students and
24 their parents and my family and friends who have not abandoned
25 me, I am very sorry to all of them.

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1 As for the teenagers that I victimized: I understand
2 now that I had a real impact on them, and that I was the person
3 responsible for our interactions. I cannot say that I felt the
4 same way when I was chatting with them. A person is capable of
5 rationalizing just about anything. But I do now, and I am
6 deeply ashamed.

7 I have damaged these teenagers' relationships with
8 their parents. I know that I have done this because in each
9 and every case parents have discovered that their sons were
10 hiding something from them. A teenager values nothing so much
11 as his or her privacy. I am positive that there is no longer
12 any privacy for these teenagers. They were chatting with a
13 stranger online, sending nude photographs of themselves to him,
14 and I was the one who put them in this situation, and I am
15 truly sorry.

16 I have tremendously complicated matters for teenagers
17 during a period of life where identity is most malleable. My
18 actions have likely instilled in these teenagers profound
19 doubts about themselves. They no doubt feel very vulnerable.
20 They are no doubt less trusting of their own judgment. I'm not
21 sure if I can enumerate what all of their doubts may be, and
22 that's what troubles me the most.

23 Part of the road to redemption includes acceptance of
24 responsibility and expressions of remorse. So it is common
25 that people in my position stand before your Honor, as I do

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1 today, and explain how sorry they are and only wish that they
2 could undo the damage caused by their actions. That is
3 certainly true for me.

4 To the parents of the young men that I chatted with, I
5 cannot undo what I have done, but I can tell you that I have
6 been receiving treatment and will continue to do so. There
7 will be no future sons of parents that will be put through what
8 you have suffered. I hope that this offers some comfort to
9 these parents. I hope and only wish that I could do more.

10 Your Honor, I've come to realize that whatever my
11 mental issues were, they didn't justify me using teenagers in
12 an elaborate alternate reality fantasy to reinforce my feelings
13 about myself, to reenact my own insecurities from childhood. I
14 was subjecting these teenagers to my own psychodrama. Prior to
15 my arrest, given the nature of my interactions, as I discussed
16 in my writing to the Court, it was incredibly difficult for me
17 to empathize with my victims, because I didn't see them as
18 such. I felt powerless. But in therapy I've come to realize
19 that, in fact, I had all the power in these interactions. I
20 was the one who sought out these teenagers, and I was the one
21 responsible for our interactions. I was not the victim; I was
22 the offender.

23 My students looked to me as a leader and a role model
24 through my entire career. They would come to me always,
25 sharing with me all sorts of personal problems and asking for

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1 advice. I worked hard to inspire them to be the best people
2 they could be. This was real. But my online conduct -- my
3 obsessive behavior -- was also real. And I failed my students
4 by not holding my private life to the high standards demanded
5 by virtue of being a teacher and of being the director of the
6 Bronx Science Speech & Debate Team.

7 More than any other student, I hurt the student whose
8 photograph I used in my fake profiles online. In many ways, I
9 was his mentor and his confidante, helping him through the many
10 obstacles of teenage life. I saw a lot of myself in him. It
11 pains me tremendously to imagine how deeply betrayed he must
12 feel and to know that he must constantly question whether my
13 entire association with him was some kind of sham. I am so
14 sorry for hurting him.

15 Your Honor, my path forward will not be easy, and that
16 is a result of my own crimes. But I am determined to find a
17 way to continue dedicating myself to the betterment of others.
18 I have always believed in public service, and I am still
19 committed to a life of it, even if it's not in the forms I had
20 originally wanted when I was younger.

21 That commitment has guided me since I entered prison.
22 I volunteered to work as a GED instructor as soon as the
23 opportunity was offered. But before then, and since then,
24 while waiting for an official role, I have endeavored to be a
25 resource to my fellow inmates. Steve has told you a little bit

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1 about this. There are some other things that I would like to
2 share. In one-on-one sessions, in group discussions, and in
3 informal classes, I have been able to be a teacher again. I
4 hope to be able to formalize this at the compound to which I am
5 designated.

6 Your honor, since being remanded to MDC Brooklyn in
7 September, I have taught fellow inmates how the justice system
8 works and instilled in them an appreciation for why it ought to
9 be respected. I have worked with both the illiterate and the
10 functionally illiterate to develop their reading and writing
11 skills. @I agree with everything Steve mentioned, and my cell
12 has become an informal lending library in both of the units in
13 which I have lived. During the presidential race, I was happy
14 to explain the peculiarities of the American electoral system
15 to the many people who had questions. I have helped connect
16 inmates who were about to be released with services on the
17 outside that directed them to a place to stay and to job
18 opportunities. I have asked friends on the outside to
19 translate legal materials for inmates who don't speak English
20 so that they will better understand their cases.

21 And I have found, much as I did when I was a coach,
22 that people feel comfortable approaching me not just for
23 specific knowledge but for more general advice as well. I have
24 helped hardened criminals reestablish ties with loved ones with
25 whom they have long since lost contact. I have helped the

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1 newly incarcerated recognize their situation as an opportunity
2 to grow and to change. And I have encouraged people to
3 understand their own value as individuals and their ability to
4 be productive members of society in the future.

5 Your Honor, being in prison is really difficult, and
6 it is really humbling. But it's not all negative, because,
7 just as I've encouraged fellow inmates to think of prison as an
8 opportunity for renewal and self-reflection, I have practiced
9 what I've preached, and I've used prison as an opportunity to
10 rebuild strong relationships with my friends and my family, to
11 work on building a better life for myself, and to reflect on
12 the impact of my crimes. I have learned that I can still teach
13 and help others even if I can no longer be a high school
14 teacher. And I am determined to make sure my future behavior
15 and sense of self are worthy of the people in my life who are
16 supporting me and who want to see me succeed again. And I'm
17 committed to making sure that I never, ever cause this kind of
18 pain and harm again to anyone.

19 THE COURT: Thank you, Mr. Cruz.

20 MR. ZISSOU: Judge, I beg your pardon. I should have
21 mentioned that Dr. Kaplan, Dr. Kreuger and Mr. Mercer are
22 present, should the Court have any questions about their
23 findings.

24 THE COURT: This is the government's opportunity to
25 speak. Ms. Crowley.

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1 MS. CROWLEY: Yes, Judge. I am going to be relatively
2 brief. A lot has been said already, and I know your Honor has
3 reviewed the lengthy submissions from both the parties and from
4 the Probation Department.

5 Much has been said in the words of defense counsel and
6 in the defendant's submission about Mr. Cruz's attempts to
7 rehabilitate after his arrest, to atone for the things he did,
8 and about the great successes and accomplishments he had before
9 he was arrested. But I would like to ask the Court to consider
10 the conduct, what actually happened in this case, why we're
11 here, or, to use Mr. Zissou's word, "the truth."

12 There is no doubt that Mr. Cruz has taken substantial
13 steps to rehabilitate himself and to contribute to his
14 community after his arrest. But there are two things I would
15 like to address specifically, and both of them I think
16 underscore that the defense and the government have a
17 fundamentally different view of Mr. Cruz's culpability in this
18 case, to some extent.

19 Mr. Cruz, in his submission and in Mr. Zissou's words
20 today, suggests that the pornographic images that the defendant
21 solicited from children were a by-product of his obsessive
22 compulsive driven desire to chat with, in his words, popular
23 jocks. For example, at page 6 of his submission, the defendant
24 writes that some of the boys during the course of the chats
25 happen to send images -- nude images of themselves.

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1 In addition, your Honor, the defendant and the defense
2 repeatedly refer to Mr. Cruz's victims as "teenagers," as
3 "popular jocks." These were kids. These boys did not just
4 happen to send photographs to Mr. Cruz. He repeatedly
5 persistently requested them from them. He paid for them. And
6 in some cases, as your Honor knows from some of the chats that
7 the government included with the submission, he demanded them,
8 demanded the photographs.

9 I have no doubt that one of the defendant's aims in
10 this behavior that he conducted for years was to engage in
11 friendly banter with kids he considered to be cool. But that
12 was not the primary goal. He created a fake identity using the
13 photograph of a former student, pretended to be a teenager, and
14 engaged these young boys. He began by complimenting them,
15 flattering them, and then gradually moved into conversations
16 about sex, and eventually solicited and often received nude and
17 pornographic photographs of themselves.

18 I'm sure that much of this was driven by the
19 defendant's desire to talk to the cool kids, as he says in his
20 submission and as some of the defendant's experts have said,
21 but what he actually sought to do, what he did, was far more
22 pernicious than that. He solicited, paid for, and received
23 pornographic images of kids. The seriousness of this just
24 cannot be minimized.

25 Second, a lot has been said -- and the Court should

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1 recognize -- about the accomplishments that Mr. Cruz had as a
2 teacher and a debate coach at Bronx Science, what he did for
3 the kids, he taught, and how he changed their lives. He really
4 does appear to have been a great teacher, and I don't want to
5 minimize that. But there are two sides to this aspect of
6 Mr. Cruz, and I want to talk for a second about the other side.
7 And that is his success as a teacher in some ways allowed him
8 to engage in his criminal conduct for many years. In some
9 senses, your Honor, the defendant used his close relationships
10 with these kids to engage others, to victimize others. He
11 flattered them. He learned to speak their language. He
12 learned how to manipulate them.

13 So, when the Court considers the many written letters
14 that have been submitted by Mr. Cruz's former students and
15 parents of those former students who have attested to the
16 impact that Mr. Cruz has had on their lives, I ask the Court to
17 also consider the other kids who Mr. Cruz has impacted, who are
18 not here today but some of whom have submitted victim impact
19 statements. Some of them are not here because, frankly,
20 they're ashamed that they were drawn into this. I ask you to
21 consider how the defendant impacted their lives in horrible
22 ways that they often will not get over.

23 Judge, your Honor notes from our submission that the
24 government seeks a sentence below the guidelines. For many of
25 the reasons that Mr. Zissou and Mr. Cruz have said here today,

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Sentence

1 the government recognizes that there are aspects of this
2 defendant that do not warrant a guidelines' sentence. However,
3 what cannot be ignored here is the defendant's conduct for
4 years and the harm that he has caused to many, many victims,
5 and for those reasons, your Honor, the government seeks a
6 sentence substantially above the mandatory minimum 60 months.

7 THE COURT: Thank you very much, Ms. Crowley.

8 This is the Court's statement of reasons for the
9 sentence to be imposed on Mr. Cruz.

10 May I help you, Mr. Zissou?

11 MR. ZISSOU: Your Honor, I just wanted to respond to
12 one thing. Would your Honor permit that?

13 THE COURT: Go ahead.

14 MR. ZISSOU: Judge, I think one thing Ms. Crowley just
15 fundamentally misunderstands, Mr. Cruz didn't become a teacher
16 or be a teacher to advance the chats or to learn the language
17 of teenagers. He never stopped being a teenager. He didn't
18 have to learn the language. Thank you.

19 THE COURT: Thank you, Mr. Zissou.

20 This is the Court's statement of reasons for the
21 sentence to be imposed on Jon Cruz.

22 In sentencing the defendant, I've considered all of
23 the materials that I referenced at the outset. I've considered
24 the very thoughtful statements of defense counsel and of the
25 government and the sincere statement of Mr. Cruz, and I think

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Sentence

1 the opportunity to make that statement was important to
2 Mr. Cruz's path to getting right health-wise and getting right
3 with the law.

4 I have considered each of the factors set forth in
5 Section 3553(a). I need not recount all that I've considered,
6 but I will mention several of the factors.

7 Jon Cruz received a degree in history and then went on
8 for a Master's of Science Degree in Adolescent Education, with
9 a focus on students in grades 7 through 12.

10 In 2005, he became a substitute teacher at Bronx High
11 School of Science and then became the debate coach. He had
12 remarkable success with his students, remarkable loyalty from
13 his students, and many of them have supported him in this time
14 of difficulty for Mr. Cruz. He became a full-time teacher in
15 2011, and continued in that role until March of 2015.

16 What was not known is that Mr. Cruz would get up at
17 5 o'clock in the morning and go online and contact children
18 under the age of 16 and engage in conduct which I will describe
19 a little later. He was so obsessed that he would often -- he
20 would stay online from 5 a.m. until it was time to leave for
21 work and then get home from work and go back on until 1 o'clock
22 in the morning. Candidly, in one of his discussions with one
23 of his healthcare providers, he estimated that the number of
24 young people who he contacted, since he was a young person in a
25 similar manner, was probably measured in the thousands.

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Sentence

1 I have victim impact statements from family members,
2 and I'm not going to take the time up to go through them all,
3 but I'm going to read from one of them: "In December of 2013,
4 we discovered our 14-year-old son was being targeted by a
5 sexual predator. What started out as our son believing he was
6 being compensated for modeling pictures turned into explicit
7 nude pictures being sent over the Internet and distributed to
8 pedophiles, as you can imagine our anger and utter devastation
9 over this as parents."

10 I will say, parenthetically, there is no evidence of
11 further distribution of photos that were received.

12 The letter goes on: "Shortly after this was
13 discovered, our son became very angry and depressed. He
14 started to act out at home and in school. Over the last almost
15 three years we have dealt with anger issues, substance abuse,
16 and legal trouble. Our son, who had always been a straight A,
17 well-behaved and well-adjusted kid, an all-American athlete,
18 struggles daily with emotional and behavioral problems. He
19 went from a Presidential Excellence Award winner and childhood
20 wrestling prodigy to spending his 17th birthday under house
21 arrest. We have spent countless hours and thousands of dollars
22 trying to help him through these struggles. He attended rehab
23 and has ran away from home dozens of times.

24 "It has affected our family in such a way that our
25 life revolves around trying to keep him clean and on the right

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Sentence

1 path. We have both nearly lost our jobs, having to miss work
2 for him. Our 10-year-old daughter has been exposed to things
3 at a very young age that she shouldn't have been subjected to."

4 Now, you might listen to something like that and you
5 might think that this is an overwrought parent, someone who is
6 exaggerating. But then you look at the transcript of the
7 exchanges:

8 Mr. Cruz: "What would I have to owe for a big series
9 of mirror pix now, a series of pix of you hard now (including
10 ones where you aren't holding it), a vid or two of you talking,
11 a vid or two of you stroking? Honestly, name your price. And
12 can we talk a bit anyway? Are we cool?"

13 The victim says: "You've been saying you were gonna
14 pay forever, man, and I've been sending pics and" -- he uses a
15 colloquialism -- constantly. So I'd like to make sure you're
16 still willing to pay before more. Just to make sure."

17 Mr. Cruz: "I have been very good to you with paying
18 on time and being patient and stuff so I am not sure what you
19 mean. I have always come through with money, and even given
20 you more than promised sometimes."

21 Mr. Cruz: "Just saying."

22 And then the victim sends pornographic pictures.

23 Another exchange:

24 Mr. Cruz: "Please keep sending; I waited all day
25 yesterday and today for these. I am now out on a date so I

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Sentence

1 cannot send the card; I did not want to get it until I received
2 this stuff since the last few times I have paid, you dropped
3 off for a while. I will get you your card, but keep sending.
4 I may have to send it early in the morning. Keep them coming,
5 please. Thanks."

6 This is Mr. Cruz again: Really send an incredible set
7 tonight. To be honest, I am giving you a lot, and you know
8 that, and I have been really patient with stuff, so please go
9 nuts with this. I will be quiet for a while."

10 The victim sends him five images and says, "I hope
11 these 5 can hold up over until later..."

12 And Mr. Cruz says: I cannot text for a while but
13 please keep going; very intense stuff. Bare feet, too, maybe
14 both bare feet and face as well as bare feet and hard. I will
15 text back later."

16 I could go on but I will not.

17 I realize that Mr. Cruz has had his problems since he
18 was 12 or 13 years of age. One can say that he did not choose
19 at the outset to have these problems and they have their
20 origins in a mental illness or personality disorder. I accept
21 that. But the goals of sentencing include just punishment.

22 Mr. Cruz is a smart man. Mr. Cruz had the moments
23 where his conscience rang through, and he knew, whether it was
24 at 2 a.m. or in the middle of the day, he knew that what he was
25 doing was wrong. This is a man with a Master's Degree in

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1 Adolescent Education. He worked with children, and because he
2 worked with children he was more effective in doing what he did
3 than a person who did not. He knew how to manipulate the
4 victims. I don't suggest that he went for his master's degree
5 so that he could be a better manipulator, but these are the
6 tools, both his educational background and his daily
7 interaction with students, that were used quite effectively to
8 manipulate these victims and cause them harm.

9 His purpose was not to cause harm, but the consequence
10 of it, the foreseeable consequence, was to cause harm. The
11 fact that he didn't have it as his purpose is just a function
12 of his focusing solely on his needs.

13 The point has been made that many agree that he
14 doesn't pose a risk of reoffending. Well, I've looked, for
15 example, at Dr. Kreuger's report. And Dr. Kreuger uses four
16 different risk assessment instruments, and three of them, on
17 the administration of the test, view the risk of reoffending in
18 a similar manner as low. So, I'd like to focus on one of them.

19 It is a test called the Static-99R. This is what
20 Dr. Kreuger says about the Static-99R. He describes it as
21 "arguably the most validated and thoroughly studied risk
22 assessment instrument for sexual recidivism. I computed
23 Mr. Cruz's score as being 5, which places him in the moderate
24 high risk category for sexual recidivism."

25 One of the factors in sentencing an individual that I

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1 must take account of is the need to protect the public from
2 further crimes of this defendant. That is my obligation. I
3 need to also ensure that any sentence imposed serves the
4 purpose of deterring others from engaging in similar conduct.
5 I need to, and I have, considered the Sentencing Guidelines,
6 policy statements, and official commentary of the United States
7 Sentencing Commission. I've considered them in an advisory
8 manner, and recognize that I am not obligated to sentence
9 within the Sentencing Guidelines. I acknowledge that I have
10 variance discretion.

11 For the crimes of Jon Cruz, I intend to sentence the
12 defendant to 84 months' imprisonment, ten years supervised
13 release, impose restitution in the amount of \$12,200, waive the
14 fine based on the restitution obligation and limited assets and
15 presently limited earning ability, and impose the \$100 special
16 assessment.

17 The foregoing is in my view sufficient but not greater
18 than necessary to achieve the purposes of the sentencing
19 statute, Section 3553.

20 Does the defendant or his counsel have any objection
21 to the Court's proposed sentence or to the statement of reasons
22 for that sentence?

23 MR. ZISSOU: May I have a moment, Judge?

24 THE COURT: You may.

25 (Pause)

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1 MR. ZISSOU: Judge, thank you for your indulgence.

2 I should, inasmuch as we have recommended a sentence
3 of 60 months in this case, obviously I object to the imposition
4 of the sentence.

5 THE COURT: Well, it is not obvious. I am asking
6 you --

7 MR. ZISSOU: Yes. I am objecting to the sentence.

8 THE COURT: And how is that consistent with the plea
9 agreement in this case?

10 MR. ZISSOU: Well, the plea agreement is a function of
11 the -- I think you are addressing the issue of appeal. There
12 is no right to appeal; it has been waived at that rate. But
13 inasmuch as we believe a sentence of 60 months is sufficient
14 but not greater than necessary, if I were to say I have no
15 objection, then I would be --

16 THE COURT: I understand. Very well. Thank you.

17 Does the government have any objection to the Court's
18 proposed sentence or to the statement of reasons for that
19 sentence?

20 MS. CROWLEY: No, your Honor.

21 THE COURT: All right. Mr. Cruz, please stand and the
22 Court will impose sentence.

23 Jon Cruz, it is the judgment of this Court that you
24 are hereby remanded to the custody of the United States Bureau
25 of Prisons to be imprisoned for a period of 84 months.

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Sentence

1 Following release from imprisonment, you shall be
2 placed on supervised release for ten years, with the following
3 terms and conditions: You shall not commit another federal,
4 state or local crime, nor illegally possess a controlled
5 substance, nor possess a firearm or destructive device. You
6 shall refrain from any unlawful use of a controlled substance,
7 and shall submit to one drug test within 15 days of placement
8 on supervised release and at least two unscheduled drug tests
9 thereafter, as directed.

10 You shall cooperate in the collection of DNA as
11 directed.

12 The standard conditions of supervision 1 through 13
13 are imposed, with the following special conditions:

14 You shall submit your person, residence, place of
15 business, vehicle, and any other property or electronic devices
16 under your control to a search on the basis that the probation
17 officer has reasonable suspicion that contraband or evidence of
18 a violation of the conditions of release may be found. The
19 search must be conducted at a reasonable time and in a
20 reasonable manner. Failure to submit to search may be grounds
21 for revocation.

22 The Court shall inform any other residents that the
23 premises may be subject to search pursuant to the condition.

24 You shall undergo a sex-offense specific evaluation
25 and participate in an outpatient sex offender treatment and/or

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1 outpatient mental health treatment program approved by
2 Probation. You shall abide by all rules, requirements and
3 conditions of the sex-offender treatment program, including
4 submission to polygraph testing.

5 You shall waive your right of confidentiality in any
6 records for mental health assessment and treatment as a
7 consequence of this judgment to allow the probation officer to
8 review your course of treatment and progress with the treatment
9 provider.

10 You shall contribute to the costs of services rendered
11 based on your ability to pay and the availability of
12 third-party payments.

13 The Court authorizes the release of available
14 psychological and psychiatric evaluations and reports,
15 including the Presentence Investigation Report, to the sex
16 offender treatment provider and/or mental health treatment
17 provider.

18 You shall not have contact with the victims in this
19 case. This includes any physical, visual, written or
20 telephonic contact with such persons. Additionally, you shall
21 not directly cause or encourage anyone else to have contact
22 with the victims.

23 You shall not have deliberate contact with any child
24 under 18 years of age unless approved by the Probation
25 Department.

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1 You shall not loiter within 100 feet of schoolyards,
2 playgrounds, arcades, or other places primarily used by
3 children under the age of 18.

4 You shall register with the state sex offender
5 registration agency in any state where you reside, are
6 employed, carry on a vocation or are a student, and shall
7 provide proof of registration to the probation officer.

8 You shall undergo a sex-offense specific evaluation
9 and participate in a sex-offender treatment and/or mental
10 health treatment program approved by Probation. You shall
11 abide by all rules, requirements and conditions of that
12 treatment program.

13 You shall refrain from the use of any computer,
14 Internet-connected device, telephone, social media site as a
15 means of communicating with any child under the age of 18
16 unless approved by the Probation Department.

17 You shall provide the probation officer with access to
18 any requested financial information.

19 You shall not incur new credit card charges or open
20 additional lines of credit without the approval of the
21 probation officer unless you are in compliance with the
22 installment payment schedule.

23 You shall report to the nearest probation office
24 within 72 hours of release from custody.

25 It is further ordered that you shall pay to the United

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1 States a special assessment of \$100, which shall be due
2 immediately.

3 Restitution in the amount of \$12,200 is ordered in
4 this case.

5 There is a proposed order of restitution. Any
6 objection to the order?

7 MR. ZISSOU: No, your Honor. It will be paid
8 forthwith.

9 THE COURT: All right. And it is going to be paid?

10 MR. ZISSOU: Forthwith.

11 THE COURT: Thank you.

12 In light of the representation that it can be paid
13 forthwith, I will order that it be paid within 30 days of the
14 judgment in this case.

15 Mr. Cruz, you have the right to appeal the sentence I
16 have imposed in this case. If you cannot afford the cost of an
17 appeal, you may apply for leave to appeal as a poor person.
18 The time limits for filing a Notice of Appeal are brief and
19 they are strictly enforced.

20 If you request, the Clerk of Court will prepare and
21 file a Notice of Appeal on your behalf immediately.

22 Do you understand all of that?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: All right. Please be seated.

25 Anything further from the government?

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1 MS. CROWLEY: Your Honor, the government moves to
2 dismiss all open counts in the Indictment.

3 THE COURT: Without objection, that is granted.

4 And from the defense?

5 MR. ZISSOU: Would your Honor be kind enough to
6 indicate in the judgment a recommended designation to FCI
7 Danbury, please?

8 THE COURT: I'm going to recommend that the defendant
9 be housed in a facility as close to New York City as is
10 feasible to facilitate family visitation.

11 I am also going to recommend that the Bureau of
12 Prisons evaluate Mr. Cruz for appropriate mental health
13 treatment.

14 Mr. Cruz, you have a job to do and you are making
15 progress in that regard. You are using your considerable
16 skills, as you tell me, to help people who you encounter while
17 you are incarcerated. That's a good thing to do. That's good
18 for your own personal mental health, your own well-being, and
19 your own sense of worth as a person. You also have a lot of
20 people on the outside, particularly your family members and
21 close family friends, who have stood by you and some of your
22 former students as well and former colleagues. You need to
23 figure out a proper way to make amends to them.

24 You also will have a long life after you get out.
25 It's going to be more of a struggle than you can imagine to

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1 overcome your compulsion. To acknowledge that you have a
2 compulsion and that you need help is a great start. It's not
3 the end of the journey. If you do things right and you work
4 hard, you can still have a full life. You will be out. You
5 will be on supervised release for a long period of time after
6 you are out, but you can have a life. If you reoffend, you can
7 only imagine the consequences. They will be harsh and severe.

8 I wish you and your family in this regard the very
9 best.

10 We are adjourned.

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